



**Report of the
Department of Professional and Financial Regulation**

to

the Joint Standing Committee on Banking and Insurance

Pursuant to P.L. 2001, c. 262

**“An Act to Conform the State’s Financial Services
Privacy Laws with Federal Law”**

January 15, 2002

Angus S. King, Jr.
Governor

S. Catherine Longley
Commissioner

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I. Introduction

In passing P.L. 2001, c. 262, “An Act to Conform the State’s Financial Services Privacy Laws with Federal Law,” the Legislature directed the Department of Professional and Financial Regulation to report to the Joint Standing Committee on Banking and Insurance on the following issues related to the federal Gramm-Leach-Bliley Act (“GLB”), 15 U.S.C. §6801, *et seq.*, and the implementing federal regulations:

1. The legislative actions taken by the 50 states prior to January 1, 2002 or the status of any legislative actions in other states, including whether any states have enacted laws or rules more protective of consumer privacy;
2. Decisions by the Federal Trade Commission on the enforcement of state privacy laws that differ from the federal law and regulations against federally chartered financial institutions or credit unions authorized to do business in this State; and
3. The extent to which complaints have been made by consumers related to the sharing of personal information and any enforcement actions taken by agencies within the Department of Professional and Financial Regulation.

In addition to addressing each of the above-referenced issues, this report will also provide the Committee with information on the outreach and educational efforts undertaken by the Department since the enactment of P.L. 2001, c. 262.

II. Legislative Action in Other States

In compiling information on legislative action taken in other states, the Department has relied upon information compiled by the various regulatory associations of which its agencies are members: the Conference of State Bank Supervisors, the National Association of Insurance Commissioners, the National Association of Consumer Credit Administrators and the North American Securities Administrators Association. Because this information was derived from a variety of sources that sometimes provided inconsistent information, it should not be relied upon as definitive.

In 2001, at least twenty-four states considered some form of legislation addressing “opt in” and “opt out” standards.^{1,2} A number of states (at least nine) also passed legislation authorizing the state’s insurance regulator to adopt rules as required by Gramm-Leach-Bliley.

¹ Source: American Bankers Association, Office of the General Counsel

² An “opt in” standard is one under which certain nonpublic personal information cannot be shared by a financial institution with nonaffiliated third parties without the customer’s consent; under an “opt out” standard, the information can be shared with non-affiliated third parties unless the consumer has exercised his or her right to “opt out” of information sharing and prohibit the disclosure of such information.

As of December 1, 2001, no state had enacted legislation to adopt an “opt in” standard (although Connecticut amended an existing “opt in” standard), while six states either enacted an “opt out” standard or created a Gramm-Leach-Bliley exception to an existing “opt in” standard. One of the states that enacted a Gramm-Leach-Bliley exception to an existing “opt in” standard was North Dakota, which had a petition for a determination of preemption pending with the FTC at the time the “opt out” standard was adopted. Subsequent to the passage of that legislation, however, a petition was circulated seeking repeal of the newly enacted law. Enough signatures were obtained to place the referendum on the ballot in the next state-wide election, scheduled for June 11, 2002.

The State of Vermont historically had been an “opt in” state for banks and credit unions and, in 2001, it adopted rules extending “opt in” to all providers of financial services. Those rules are scheduled to take effect in February, 2002; however, there have been some indication that the rules may be challenged in court.

III. Decisions by the Federal Trade Commission

As of January 1, 2002, four states had petitioned the Federal Trade Commission (“FTC”) for a determination of whether state law is inconsistent with Gramm-Leach-Bliley and, therefore, preempted. One decision has been issued; the other three petitions are still pending.

North Dakota filed the first petition with the FTC on September 12, 2000. The petition sought a determination whether a North Dakota law that required customer consent as a prerequisite to disclosure, subject to certain statutory exceptions,³ was preempted by the privacy provisions of the Gramm-Leach-Bliley Act. While that petition was pending with the FTC, the North Dakota law was amended to permit the sharing of information in accordance with Gramm-Leach-Bliley. On June 28, 2001, the FTC issued a letter decision, in which it determined that the North Dakota statute was not inconsistent with Gramm-Leach-Bliley and, therefore, not preempted. A copy of that decision is attached as Appendix A.

In addition to North Dakota, the states of Connecticut, Illinois and Vermont have also filed petitions with the FTC.⁴ As of January 1, 2002, no decisions have yet been rendered on those petitions. In general, the statutes of all three states prohibit the disclosure of financial records to any person unless the customer has authorized such disclosure, subject to certain exceptions.

³ North Dakota Century Code Chapter 6-08.1

⁴ Illinois filed a petition with the FTC on July 20, 2001; Connecticut’s was filed on July 20, 2001; and Vermont’s on December 4, 2001.

IV. Complaints and Inquiries from Consumers Relating to the Sharing of Personal Information and Enforcement Action Taken by the Agencies

A. Consumer Complaints and Inquiries

For the purpose of distinguishing between complaints and inquiries, the Department used the same definition of “complaint” as is used in its strategic plan and as is found in the Maine Insurance Code.⁵ Under the Department’s strategic plan, a “complaint” is defined as “a contact with a consumer, in whatever form, which results in the need to conduct further investigation and/or communicate with a regulated party for response or resolution.”

From June 1, 2001 through December 31, 2001, the Department received a total of 118 complaints and inquiries regarding privacy and the sharing of personal information. Sixty of these complaints and inquiries were received from consumers; the remaining 58 were from members of the regulated industries, trade associations or attorneys. Out of the 60 complaints and inquiries from consumers, 40 of them were received during the month of June, 2001.

Only 3 of the 60 contacts from consumers were classified as complaints; the remaining 57 constituted inquiries under the criteria described above. One complaint dealt with the failure of an entity to provide the notice required under Gramm-Leach-Bliley; one involved the inability of a consumer to opt-out via a toll free telephone number without providing a social security number; and the third involved the fact that a bank had required that the consumer’s bank account number be written on the check that the consumer sought to cash at the institution upon which the check was drawn.⁶

The 57 inquiries from consumers can be summarized as follows: 2 consumers indicated that the privacy notice they received did not include a right to opt out; 3 consumers indicated that they had not received a privacy notice; 6 consumers called to express displeasure with the new law; 11 consumers called with specific questions or concerns about a privacy notice they had received and 35 consumers had more general inquiries, such as asking about how to exercise the right to “opt out,” or why they received a notice from a bank where they no longer have an account. A more detailed summary of complaints and inquiries by agency is attached as Appendix B.

B. Enforcement Actions

The Bureau of Financial Institutions, the Office of Consumer Credit Regulation and the Office of Securities have incorporated a review of privacy policies, notices and compliance procedures into their compliance examinations. To date, none of the agencies have initiated a formal enforcement action requiring an administrative hearing. The Bureau of Insurance, however, has worked with one health insurance carrier to address an inaccurate notice and the

⁵ See 24-A M.R.S.A. § 216(2).

⁶ Although this complaint does not relate directly to Gramm-Leach-Bliley, it is included in this report because it pertains to privacy concerns.

Office of Consumer Credit Regulation has cited five creditors for failure to give the required privacy notice and required corrective action as part of its compliance examinations.

V. Consumer Outreach and Education Efforts

The Department committed to undertake substantial consumer education and outreach efforts.

The Department engaged in outreach and education through the following efforts: press releases; speaking engagements; development of a consumer brochure; posting of the consumer brochure and frequently asked questions about privacy on the Department's website (http://www.state.me.us/pfr/pfr_privacy_links.htm); and the placement of an advertisement in several local newspapers.

Between September 1 and December 31, 2001, eight representatives of the Department spoke on 16 different occasions to a variety of audiences about privacy, including civic and charitable associations and groups representing regulated entities. Groups addressed by Department included the AARP Housing and Utilities Group, Bath Area Senior Citizens Council, the Phillips-Strickland House in Bangor, the Salvation Army (Senior Citizens Group), Senior Spectrum, the Southern Maine Area Agency on Aging, the Bath Rotary, the Freeport Rotary, the Skowhegan Rotary, the Camden-Rockport-Lincolnville Chamber of Commerce, Sharing and Caring Day in Oxford, and the Maine Bankers Association.

Other outreach efforts included press releases. The Department issued a press release on June 5, 2001, informing consumers that Gramm-Leach-Bliley would soon take effect, alerting them about the privacy notices they had received and would continue to receive, stressing the importance of those notices, and inviting them to contact the agencies with in the Department with any questions. A copy of the press release is attached as Appendix C.

The Department also developed a brochure entitled "**A Consumer's Guide to Financial Privacy Rights under the Gramm-Leach-Bliley Act,**" and announced the publication of the brochure with a press release on October 10, 2001. Copies of the press release and the brochure are attached as Appendices D and E, respectively. A letter was sent to all public libraries in Maine, informing them of the brochure's availability upon request. In addition, the Maine Association of Community Banks, the Maine Bankers Association and the Maine Credit Union League reproduced the brochure and made it available to their various members for distribution to their customers.

Finally, the Department placed an advertisement in the *Bangor Daily News*, the *Portland Press Herald*, and the *Lewiston Sun Journal* advising consumers of their right to "opt out" and the availability of the brochure. A copy of the advertisement is attached as Appendix F.

VI. Conclusion

Based upon the information compiled by the Department, it would appear that the majority have states thus far have taken the same approach as Maine, by adopting the federal Gramm-Leach-Bliley standard. To date, with only 60 consumer complaints and inquiries having been received by the Department since June 1, 2001. The Department has taken several steps to educate the public about their rights through publication of a consumer brochure and other outreach efforts.

Readability of the privacy notices continues to be an issue. The Federal GLB Agencies⁷ have taken a number of steps to try to address this issue, including holding a conference in Washington, D.C. on December 4, 2001, entitled “Get Noticed—Effective Financial Privacy Notices.” A series of Frequently Asked Questions for the Privacy Regulation was also issued on December 12, 2001, as part of a continuing effort to educate the regulated industries of the requirements of Gramm-Leach-Bliley.

The Department will continue to monitor developments, within Maine, on the federal level and in other states. We will also continue to keep our publications and websites current and provide assistance to Maine consumers.

⁷ The Federal GLB Agencies are the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration and the Securities and Exchange Commission.

Appendix A

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

June 28, 2001

The Honorable Gary D. Preszler
Commissioner
Department of Banking and Financial Institutions
State of North Dakota
2000 Schafer Street, Suite G
Bismarck, ND 58501-1204

Dear Commissioner Preszler:

This letter responds to your September 12, 2000 petition to the Federal Trade Commission ("Commission") for a determination, under 15 U.S.C. § 6807, whether the North Dakota Disclosure of Customer Information law, N.D. Cent. Code, ch. 6-08.1-01 to 6-08.1-08 (amended 2001) ("the North Dakota statute"), is superseded, altered, or affected by Subtitle A of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809 ("GLB Act"). You also asked whether North Dakota state-chartered financial institutions must comply with the provisions of state law that are determined to afford any person greater protection than the federal law as well as with GLB Act provisions not addressed under the North Dakota statute. We note that on April 19, 2001 the Governor of North Dakota signed into law significant amendments to the North Dakota statute that will be effective on July 1, 2001. *See* S. Bill 2191, 57th Leg., Reg. Sess. (N.D. 2001). You stated in your letter of April 23, 2001, enclosing a copy of the signed law, that your request for a Commission determination "remains unchanged."

In reaching our determination, in addition to your September 12, 2000 petition and your April 23, 2001 letter, we have also considered information contained in your November 27, 2000 letter to Debra A. Valentine, General Counsel of the Federal Trade Commission, and in the October 30, 2000 letter from North Dakota Assistant Attorney General Scott A. Miller to Ms. Valentine. In addition, the Commission has consulted with the staff of the federal banking agencies, the Securities and Exchange Commission, the National Credit Union Administration, and the Commodity Futures Trading Commission about your petition.

Section 507(a) of the GLB Act, 15 U.S.C. § 6807, preserves a state "statute, regulation, order, or interpretation" that is not "inconsistent" with the provisions of the GLB Act. 15 U.S.C. § 6807(a). Under Section 507(b), a determination that a state law provides "greater protection" to consumer privacy as compared to the federal act deems such statute to be "not inconsistent" with provisions of Subtitle A of Title V, and it is thereby not preempted by that subtitle. 15 U.S.C. § 6807(b). As discussed below, because the Commission concludes that the North Dakota statute and federal law are not "inconsistent," there is no need to reach the Section 507(b) "greater protection" analysis.

In adopting Section 507, Congress established the privacy protections in the GLB Act as a "floor," or minimum protections for consumer privacy, that could be exceeded by the states. *See*

145 Cong. Rec. S13890 (daily ed. Nov. 4, 1999) (statement of Sen. Rod Grams); 145 Cong. Rec. S13789 (daily ed. Nov. 3, 1999) (statement of Sen. Paul S. Sarbanes). State law provisions that add to the privacy protections in that subtitle will not be preempted by that subtitle. It is commonplace that where federal law does not preempt certain state law provisions, state laws and federal laws that touch on the same subject matter create a "dual regulatory scheme." *Northwest Central Pipeline Corp. v. State Corporation Commission of Kansas*, 489 U.S. 493, 516 (1989).

In enacting Subtitle A of Title V, Congress expressly declared that the intent of the GLB Act privacy provisions is to ensure that "each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information." 15 U.S.C. § 6801(a). To further that objective, Subtitle A of Title V of the GLB Act restricts when a financial institution may disclose a consumer's or a customer's nonpublic personal information to nonaffiliated third parties. Financial institutions are required to provide notices to their customers about their information-sharing practices, and both consumers and customers may "opt out" if they do not want their information shared with nonaffiliated third parties. However, the GLB Act provides specific exceptions whereby a financial institution may share nonpublic personal information with a nonaffiliated third party and the consumer or customer cannot opt out, such as to market the financial institution's own products or services. *See* 15 U.S.C. §§ 6802(b)(2), (e); 12 C.F.R. §§ 313.13 to 313.15.

The North Dakota statute imposes a duty of confidentiality upon its financial institutions to ensure the protection of "customer information." N.D. Cent. Code, ch. 6-08.1-03. Thus, unless the disclosure falls within one of twelve specific exemptions, N.D. Cent. Code, ch. 6-08.1-02, the North Dakota statute prohibits a financial institution from disclosing such information unless the customer has expressly consented or "opted in." Since you filed your original petition, North Dakota enacted a new exemption to its state confidentiality law. The new exemption excepts from the requirements of the state statute "[a] disclosure of customer information by a financial institution to a nonaffiliated third party, if the disclosure is subject to federal law on the date of disclosure and the financial institution complies with applicable federal law in making the disclosure." *See* S. Bill 2191, Section 2. Thus, a North Dakota financial institution's disclosures of customer information that comply with the GLB Act and its implementing regulations fall within the new exemption.⁽¹⁾

I. The North Dakota statute is not inconsistent with the GLB Act.

A. Traditional preemption principles guide preemption analysis under Section 507 of the GLB Act.

In interpreting Section 507 of the GLB Act, our starting point is traditional preemption jurisprudence, which favors the preservation of state laws. *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 654 (1995) ("the starting presumption [is] that Congress does not intend to supplant state law").⁽²⁾ As the Supreme Court has explained:

[S]tate law is pre-empted under the Supremacy Clause, U.S. Const. Art. VI, cl. 2, in three circumstances. First, Congress can define explicitly the extent to which its enactments pre-empt

state law. Pre-emption fundamentally is a question of congressional intent, and when Congress has made its intent known through explicit statutory language, the courts' task is an easy one.

Second, in the absence of explicit statutory language, state law is pre-empted where it regulates conduct in a field that Congress intended the Federal Government to occupy exclusively. . . .

Finally, state law is pre-empted to the extent that it actually conflicts with federal law. Thus, the Court has found pre-emption where it is impossible for a private party to comply with both state and federal requirements, or where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *English v. General Elec. Co.*, 496 U.S. 72, 78-79 (1990) (citation omitted).

Section 507 of the GLB Act provides:

(a) In General.--This subtitle and the amendments made by this subtitle shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency.

(b) Greater Protection Under State Law. -- For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subtitle if the protection such statute, regulation, order or interpretation affords any person is greater than the protection provided under this subtitle and the amendments made by this subtitle, as determined by the Federal Trade Commission, after consultation with the agency or authority with jurisdiction under section 505(a) of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

15 U.S.C. § 6807; *see also* 16 C.F.R. § 313.17.

It is clear that Section 507 of the GLB Act does not expressly preempt all state laws on financial privacy nor does it intend to preempt the field, which are the first two preemption options outlined above in *English*. Here, federal preemption of a state law provision is limited to the third option, conflict preemption, where the state law "conflicts with federal law" or is "inconsistent" with federal law.

B. A state law is "inconsistent" under Section 507(a) only (1) if it frustrates the purpose of the federal law or (2) if compliance with both laws is physically impossible.

The U.S. Supreme Court has held through a long line of preemption cases that a finding of inconsistency between state and federal laws must meet a high threshold. One of two specific standards must be met before a state law can be found inconsistent. Federal law will preempt state law if it frustrates the purpose of the federal statutory scheme or if compliance with both the state and federal laws is physically impossible. *See Crosby v. National Foreign Trade Council*, 530 U.S. 363, ___, 120 S.Ct. 2288, 2294 (2000).

The first standard, frustration of purpose, has been defined as "stand[ing] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). This analysis explores whether the state law works at a cross-purpose to or otherwise thwarts the objectives of the federal law.

The second standard -- whether compliance with both the state and federal laws is physically impossible -- requires a showing of "inevitable collision between the [state and federal] schemes of regulation." See *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 143 (1963). As explained in *Florida Lime* and its progeny, "physical impossibility" is a high standard, reflecting the strong presumption against preemption. Thus, if a state law permits, but does not require, conduct that a federal law prohibits, it is not physically impossible to comply with both statutes. See *California Fed. Savings & Loan Ass'n v. Guerra*, 479 U.S. 272, 291 (1987); see also *Florida Lime*, 373 U.S. at 143. Conversely, if a state law precludes what federal law merely permits but does not require, that state law does not make it physically impossible to comply with federal law. See *Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190, 218-19 (1983) (declining to preempt California law that imposed conditions, not required under federal law, upon the construction of nuclear power plants).

C. The North Dakota statute is not inconsistent with the GLB Act under Section 507(a) because the state law does not frustrate the purpose of the federal law and compliance by financial institutions with both statutory schemes is possible.

In the present case, under the new exemption, the North Dakota statute exempts a financial institution from the state law requirements if the financial institution complies with the GLB Act. Since compliance with federal law exempts a financial institution from the state law, a North Dakota financial institution is free simply to comply with the federal requirements. Thus, compliance with both federal and state law is clearly possible, and state law does not frustrate the purpose of federal law. Nor do the North Dakota "opt-in" requirements, which come into play if a North Dakota financial institution falls outside the exemption, in this case frustrate the purpose of federal law. The purpose of Title V, Subtitle A, is to ensure that "each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information." 15 U.S.C. § 6801(a). The North Dakota opt-in requirements, if applicable, are consistent with this purpose.⁽³⁾ For these reasons, the North Dakota statute is not "inconsistent" under Section 507(a) and the state law is therefore not superseded, altered, or affected by Subtitle A of Title V of the GLB Act.

D. Since the two laws are not inconsistent, there is no need to consider whether the North Dakota statute provides greater protection under Section 507(b).

The Commission does not need to reach the Section 507(b) "greater protection" analysis unless, as provided in subsection (a), the state and federal laws are inconsistent. As set forth above, the two statutes are not inconsistent. Thus, in accordance with Section 507 and with the Supreme Court's cautious approach to preempting state law, the Commission concludes that the GLB Act does not preempt the North Dakota statute.

II. North Dakota financial institutions must comply with GLB Act privacy provisions since federal law establishes the minimum privacy protections for consumers.

You also inquired whether North Dakota state-chartered financial institutions must comply with GLB Act provisions that are not covered under North Dakota law. Yes, financial institutions must comply with all applicable GLB Act privacy provisions, as those provisions establish a "floor" on the level of privacy protections afforded consumers.

Here, for example, the GLB Act will place new notice and security requirements on all financial institutions (as defined in the GLB Act) in North Dakota. North Dakota law does not require financial institutions to provide notices regarding financial privacy policies to their customers, according to your September 12, 2000 letter. In contrast, the GLB Act requires financial institutions to provide notices to customers not later than when a customer relationship is established and annually thereafter.⁽⁴⁾ 15 U.S.C. § 6803(a); *see also* 16 C.F.R. § 313.4(a). Thus, all financial institutions operating in North Dakota must provide initial and annual notices to customers as required under the GLB Act and must implement the administrative, technical, and physical safeguards to protect the security and confidentiality of customer records and information. *See* 15 U.S.C. §§ 6803, 6801(b). This is so even if these financial institutions do not share nonpublic personal information without the customers' affirmative consent.

In addition, the definition of "financial institution" under the state law appears to be narrower than under the federal statute. *Compare* 15 U.S.C. § 6809(3)(A) *with* N.D. Cent. Code, ch. 6-08.1-01(3).⁽⁵⁾ In Mr. Miller's October 30, 2000 letter, he explained that other than the entities specified in the North Dakota definition of "financial institution" and their affiliates, the scope of entities covered by the North Dakota statute "would most likely be a question of fact." Thus, there may be "financial institutions" as defined in the GLB Act that need not comply with the state law, but must comply with the federal statute.

By direction of the Commission.

Donald S. Clark
Secretary

1. We also note additional privacy provisions in the amended state law, such as privacy protections for "agricultural and commercial accounts." S. Bill 2191, Section 3. Private information that does not relate to an individual's personal, family or household use is not protected under the GLB Act.
2. Federal agency regulations as well as statutes may preempt state law. "The statutorily authorized regulations of an agency will preempt any state or local law that conflicts with such regulations or frustrates the purposes thereof." *City of New York v. FCC*, 486 U.S. 57, 63-64 (1988).
3. In the Commission's opinion, financial institutions that comply with the state law opt-in provisions are deemed to be in compliance with the opt-out provisions in the federal law. Customers of such financial institutions are effectively opted-out by operation of state law. Where financial institutions comply with the opt-in provisions and do not share customer information absent written and express consent, the GLB Act opt-out notice is unnecessary, although, as discussed below, such financial institutions are required to provide privacy notices.
4. The North Dakota amendments changed the definition of "customer" to be congruent with "consumer" under the GLB Act and do not distinguish between these terms as regards a financial institution's obligations. The GLB Act requires financial institutions to provide notices to consumers who are not customers prior to sharing consumers' nonpublic personal information with nonaffiliated third parties. 15 U.S.C. § 6802(a); *see also* 16 C.F.R. § 313.4(a).
5. Under the GLB Act, the definition of "financial institution" includes a broad spectrum of entities that engage in activities that are deemed to be "financial in nature," such as loan brokers, check guaranty services, check cashers, collection agencies and credit bureaus. *See* GLB Act Section 509(3)(A), 15 U.S.C. § 6809(3)(A) (citing section 4(k) of the Bank Holding Company Act (12 U.S.C. § 1843(k)). *See also* 65 Fed. Reg. 33647 (2000). The definition of "financial institution" in N.D. Cent. Code ch. 6-08.1-01(3) is "any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, a bank, including the Bank of North Dakota, a savings bank, a trust company, a savings and loan association, or a credit union." This definition would also include affiliates of such financial institutions. *See* Oct. 30, 2000 letter from Assistant Attorney General Scott Miller to Debra A. Valentine.

Appendix B

SUMMARY OF COMPLAINTS AND INQUIRIES June 1, 2001—December 31, 2001

Cumulative for Department:

| | |
|---------------------|-----|
| Consumer Complaints | 3 |
| Inquiries | 115 |
| Consumers | 57 |
| Reg. Parties/Attys | 58 |
| <hr/> | |
| Total | 118 |

Commissioner's Office:

| | |
|---------------------|---|
| Consumer Complaints | 0 |
| Inquiries | 2 |
| Consumers | 2 |
| Reg. Parties/Attys | 0 |
| <hr/> | |
| Total | 2 |

Bureau of Financial Institutions:

| | |
|---------------------|----|
| Consumer Complaints | 1 |
| Inquiries | 34 |
| Consumers | 34 |
| Reg. Parties/Attys | 0 |
| <hr/> | |
| Total | 35 |

Office of Consumer Credit Regulation:

| | |
|---------------------|----|
| Consumer Complaints | 1 |
| Inquiries | 23 |
| Consumers | 8 |
| Reg. Parties/Attys | 15 |
| <hr/> | |
| Total | 24 |

Bureau of Insurance:

| | |
|---------------------|----|
| Consumer Complaints | 1 |
| Inquiries | 56 |
| Consumers | 13 |
| Reg. Parties/Attys | 43 |
| <hr/> | |
| Total | 57 |

Office of Securities:

| | |
|---------------------|---|
| Consumer Complaints | 0 |
| Inquiries | 0 |
| <hr/> | |
| Total | 0 |

Appendix C



..... NEWS

MAINE DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

35 State House Station
Augusta, Maine 04333-0035

Tel. (207) 624-8511

Fax (207) 624-8595

TDD (207) 624-8563

For Immediate Release

June 5, 2001

New Rules Governing Privacy of Consumer Financial Information Will Soon Take Effect

Contact: Kristine Ossenfort, Assistant to the Commissioner
S. Catherine Longley, Commissioner
Tel: 207-624-8511

Augusta, Maine: Maine consumers who wish to restrict the use of personal financial information should be paying attention to the privacy notices now arriving in the mail from financial service providers, according to regulators at the state's Department of Professional & Financial Regulation.

Under federal law, before a company shares such information with other, unrelated companies, it must provide consumers with the ability to stop such information from being shared. The privacy notices explain what consumers must do to exercise their "opt-out" right, such as calling a toll-free number or mailing a form back to the company.

"These privacy notices are arriving daily from banks, credit unions, insurance companies, securities firms and other, similar companies," said Commissioner S. Catherine Longley, whose department regulates many of the financial services companies. "The law requires that the notices be accurate and understandable. If consumers have questions or have misplaced their notices, they should contact the companies or call our offices for information."

Under provisions of the federal Gramm-Leach-Bliley Act of 1999, which take effect on July 1 of this year, financial institutions must provide an annual notice to consumers indicating whether personal financial information is collected and whether such information is shared with certain third parties. Personal financial information includes information provided to obtain a loan, credit card, insurance or other financial products; account balances; payment history; and credit or debit card purchase information. Personal financial information does not include health or medical

information, which cannot be shared by any entity unless a consumer gives specific permission to do so.

"Consumers should read carefully the privacy notices they receive to determine what information may be shared. If they do not want their information shared, they should carefully follow the instructions for opting out," said Commissioner Longley. "This may be a confusing time for some people, as literally thousands of such notices are being printed and mailed" added Longley. Longley also encouraged consumers to contact staff at the Department with any questions.

For questions about banks and credit unions, contact:–

Bureau of Banking: 1-800-965-5235; Internet website: www.MaineBankingReg.org,

For insurance issues contact -

Bureau of Insurance: 1-800-300-5000; Internet website: www.MaineInsuranceReg.org,

For questions related to mortgage companies, finance companies and other providers of consumer credit contact –

Office of Consumer Credit Regulation: 1-800-332-8529; Internet website: www.MaineCreditReg.org,

For securities issues contact -

Office of Securities: 1-877-624-8551; Internet website: www.MaineSecuritiesReg.org.

The Maine Legislature adopted similar state privacy standards this year although the Maine law will not take effect until sometime in September. Maine joins approximately 44 other states that follow the national standard for protecting consumer financial information. The legislation also gives the State the regulatory authority to ensure that entities providing financial services to Maine consumers safeguard that information and give people the opportunity to "opt out" of sharing their nonpublic personal financial information.

"It is incumbent upon the financial services industry to develop policies and procedures, including appropriate staff training, to assure that consumers receive information that is accurate and understandable with respect to their privacy rights," stated Commissioner Longley. "State regulators will vigilantly oversee this process to ensure that the full protections of state and federal privacy laws are provided to Maine citizens".

It is the mission of the Department of Professional and Financial Regulation to encourage sound ethical business practices through high quality, impartial and efficient regulation of insurers, financial institutions, creditors, investment providers, and numerous professions and occupations for the purpose of protecting the citizens of Maine.

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Appendix D



NEWS

MAINE DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

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For Immediate Release

October 1, 2001

STATE ANNOUNCES NEW PRIVACY PUBLICATION

Contact: Kristine Ossenfort, Assistant to the Commissioner (207) 624-8511
Howard R. Gray, Jr., Superintendent of Banking (207) 624-8570

AUGUSTA, ME - On September 21, state privacy standards that mirror the federal Gramm-Leach-Bliley Act took effect in Maine, changing the way consumers are able to limit the personal information that financial institutions provide to other companies. According to Commissioner S. Catherine Longley of the Maine Department of Professional & Financial Regulation, a new informational brochure will be published and distributed by the Department as part of a public education campaign to explain this new law and how it will affect people living in Maine. "A Consumer's Guide to Financial Privacy Rights under the Gramm-Leach-Bliley Act" will help consumers understand how to protect their financial information.

"The language used to write legislation is often complex, confusing and tough to follow," says Commissioner Longley. "The new brochure explains the Gramm-Leach-Bliley Act, so consumers will better understand how this law will affect them."

The federal Gramm-Leach-Bliley Act requires all financial institutions - such as banks, credit unions, mortgage companies, finance companies, insurance companies and securities firms - to disclose detailed privacy policies to their customers, both at the time the customer relationship is established and then at least on an annual basis. In general, if a financial institution shares information with third parties, beyond certain exceptions permitted in law, the financial institution must offer consumers the opportunity to say "no" to such sharing. This is called "opting-out."

The Department's new brochure clearly defines opting-out and what consumers should do if they choose to opt-out. The brochure also addresses frequently asked questions, such as the kinds of information that can be shared by financial institutions and what may happen if a consumer

chooses not to opt-out. This question-and-answer format offers a straightforward way for the consumer to understand the new legislation.

Commissioner Longley states, "It's important for people to understand that they now hold the key to whether financial institutions can share their personal information. We want consumers to feel comfortable with and in control of their own right to privacy."

"A Consumer's Guide to Financial Privacy Rights under the Gramm-Leach-Bliley Act" will be distributed to each member of the Maine Legislature. The brochure will soon be available at state and local libraries, banks and credit unions, AARP, Senior Spectrum, Maine Civil Liberties Union, and to consumers upon request. A copy of the brochure may be downloaded from the Department's Web site at www.MaineBusinessReg.org. Representatives from the Department will also be holding information sessions across the state during the fall.

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MAINE DEPARTMENT OF

Professional & Financial Regulation

How You Can Protect Your Financial Privacy

A Consumer's Guide to Financial Privacy Rights under the Gramm-Leach-Bliley Act

What is GLB?

In 1999, the federal government passed a law called the Gramm-Leach-Bliley Act (GLB). GLB aimed to modernize the world of finance. This law also contains consumer privacy standards to protect the privacy of people like you. These same standards have now been put into Maine law. It is important to understand how this will affect the privacy of your financial information.

What This Means for You.

When you become a customer of a financial institution, you may be asked to provide certain details about yourself – for example, your address, phone number, social security number, etc. Financial institutions are now required to tell you about their “privacy policy” – to tell you the types of information collected and if your personal information might be shared with other companies. However, you can say “NO” to having your information shared under certain circumstances.

Banks, credit unions, mortgage companies, finance companies, insurance companies and investment firms are some of the financial institutions that must provide their privacy policy to you if you do business with them.

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Angus S. King, Jr.
Governor

S. Catherine Longley
Commissioner

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Learn More About Your Right to Privacy

Department of Professional &
Financial Regulation
Representatives are available
to answer any questions
you may have regarding
your privacy rights.

For questions about...

Banks and credit unions, contact the Bureau
of Financial Institutions:
1-800-965-5235
www.MaineBankingReg.org

Insurance companies or insurance agents,
contact the Bureau of Insurance:
1-800-300-5000
www.MaineInsuranceReg.org

Mortgage companies, finance companies,
automobile dealers and other providers of
consumer credit contact the Office of
Consumer Credit Regulation:
1-800-332-8529
www.MaineCreditReg.org

Investment firms and securities issues
contact the Office of Securities:
1-877-624-8551
www.MaineSecuritiesReg.org

Opting Out: It's Your Right

The phrase "opt out" means that you now have the right to say "No" before a financial institution shares your personal information with entities that are not part of the same organization. However, there are times when a financial institution does not have to give you the opportunity to opt out. For example, if the financial institution does not share information or only shares information with certain types of companies identified by law such as credit reporting agencies, check printing firms, or data processing firms, that financial institution does not have to provide you with a means to opt out. Also, the institution can share your information with another company under a joint marketing agreement as long as that company promises to keep your information confidential. Aside from these exceptions, if the institution's privacy notice does not give you the chance to opt out, then the institution cannot share your information unless it sends you a new notice giving you an option to opt out.

It is YOUR responsibility to tell the financial institution that you want to opt out of information sharing. Otherwise, the institution can share information in the way described in the privacy notice.

How Do I Opt Out?

The most common ways of opting out involve returning a form provided by the institution or calling a toll-free telephone number.

If you do not opt out, the financial institution may share your information with nonaffiliated companies. That's why it's essential for you to get involved in the protection of your own financial privacy.

NOTE: Financial institutions are required by law to send you a new privacy notice (with an opt out provision, if applicable) at least annually.

Frequently Asked Questions

1) What kind of a notice does the financial institution have to send me about its privacy policy?

The institution must send you a privacy notice that describes the kind of information they collect and the types of businesses with whom that information might be shared. The first notice must be sent by July 1, 2001 and once a year after that. A privacy notice must also be given to you whenever you open an account with an institution that you haven't dealt with before.

2) I received a privacy notice and it didn't provide an opt out option. Is that okay?

Yes, but only if the financial institution doesn't share your information outside their corporate family and then no action is required on your part. If you're unsure, contact the institution involved for assistance.

3) What kind of information can be shared if I don't opt out?

A privacy notice must describe any information that the institution may share with companies outside the corporate family. This may include nonpublic personal information such as:

- Information you put on an application to obtain a loan, credit card, or other financial product or service;
- Account balance information, payment history, overdraft history, investments purchased or owned and credit or debit card purchase information;
- The fact that you are a customer;
- Information provided by you in connection with collecting or servicing a loan;
- Information provided by you for purposes of analyzing your investments;
- Information collected through an Internet "cookie";
- Information from a consumer report.

In any event, your institution may never share your medical or health care information without your express permission.

4) What if I don't opt out when I get a privacy notice that offers an opt out? Can I opt out later?

Yes. You can opt out at any time, but it will only affect the future sharing of information and will not be retroactive.

5) If I choose to opt out, how long does my choice last?

If you decide to opt out, your decision is effective until you cancel it in writing.

6) What if I already threw away or lost my privacy notice?

You should contact the institution involved to ask for a new notice.

7) My financial institution tells me that they can share my information with other companies under special marketing agreements. What does this mean? Can I opt out of sharing that information?

A financial institution may enter into a "joint marketing agreement" with another company to market services for the financial institution. That's a situation in which two or more financial institutions – say, a bank and an insurance company – agree to jointly offer, endorse or sponsor each other's products or services. Your financial institution's privacy notice must include a description of the information they collect about you and the fact that it may be shared under a joint marketing agreement. You don't have the right to opt out or tell your institution that they can't share your information under a joint marketing agreement. However, any company that obtains nonpublic personal information about you under a joint marketing agreement must keep it confidential and can't share it with others.

8) What else can I do to protect my privacy and limit the sharing of my personal information?

Federal and Maine state laws give you the right to reduce telemarketing calls, unsolicited e-mails and pre-screened credit offers. Visit the Department of Professional and Financial Regulation's Website at www.MaineBusinessReg.org and click on "Privacy" or contact one of the agencies listed on the back of this brochure for a list of organizations that can help keep your information from being used for solicitation.

Protect the Privacy of YOUR Personal Financial Information!

When you become a customer of a financial institution such as a bank or credit union, a mortgage company, a finance company, an insurance company, or a brokerage or investment firm, you may be asked to provide them with information about yourself. Under a new Maine law, these institutions are now required to tell you if your personal financial information might be shared with other companies. **However, you can say "NO" to having your information shared in certain circumstances.**

The Maine Department of Professional & Financial Regulation wants to help you understand the new law, and is spreading the word through a new brochure. You can find a copy of this brochure at your local library, bank or credit union, online at www.MaineBusinessReg.org or by calling the Department at 207-624-8511.

For More Information Contact:

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Professional & Financial Regulation

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